



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JUN 19 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Angela G. Foster, Esq.  
First Assistant Corporation Counsel  
City of Newark – Department of Law  
920 Broad Street, Room 316  
Newark, NJ 07102

RE: Pierson's Creek Superfund Site  
Request for Information Pursuant to 42 U.S.C. §§ 9601-9675

Dear Ms. Foster:

This letter seeks your cooperation in providing information relating to the City of Newark and the contamination of the Pierson's Creek Superfund Site ("Site") located in Newark, New Jersey. We encourage you to give this matter your immediate attention. We request that you provide a complete and truthful response to the attached Request for Information **within 30 business days** of your receipt of this letter.

The United States Environmental Protection Agency ("EPA") is investigating the presence of hazardous substances located at the Site, including hazardous substances that are or were discharged into Pierson's Creek. EPA has documented the release or threatened release of hazardous substances, pollutants and contaminants at the Site. Under Section 104(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9604(e)(2), EPA has broad information gathering authority. EPA is seeking to obtain information concerning the City of Newark and the work it has conducted with respect to Pierson's Creek which originates in the vicinity of Avenue L, flows in a generally southern direction and eventually discharges into Port Newark. EPA believes that you might possess information which may assist EPA in its investigation of the Site.

While EPA seeks your cooperation in this investigation, compliance with this Request for Information is required by law. In preparing your response to this Request for Information,

please follow the instructions provided in Attachment A. When you have prepared your response to the Request for Information, contained in Attachment B, please sign and have notarized the enclosed "Certification of Answers to Request for Information," and return that Certification to EPA along with your response. Please note that false, fictitious or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. In addition, Section 104 of CERCLA, 42 U.S.C. § 9604, authorizes EPA to pursue penalties for failure to comply or for failure to respond adequately to this Request for Information.

Some of the information EPA is requesting may be considered by you to be confidential. Please be aware that you may not withhold from EPA the information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures described in the Instructions in Attachment A, including the requirement for supporting your claim for confidentiality.

If you have information about other parties who may have information which may assist EPA in its investigation of the Site or may be responsible for the contamination at the Site, that information should be submitted within the time frame noted above.

Please note that if after submitting your response you obtain additional or different information concerning the matters addressed by our Request for Information, you must immediately turn over the additional or different information to EPA.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

Your response to this Request for Information should be postmarked or received by EPA within **30 business days** of your receipt of this letter. Your response should be mailed to:

Pamela Tames, P.E., Remedial Project Manager  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
290 Broadway - 20<sup>th</sup> Floor  
New York, NY 10007-1866

with a copy to:

Amelia Wagner, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway - 17<sup>th</sup> Floor  
New York, NY 10007-1866

If you wish to discuss this further, please contact Ms. Tames at (212) 637-4255 with technical questions or Ms. Wagner at (212) 637-3141 with legal questions. Please note that all communications from attorneys should be directed to Ms. Wagner.

We appreciate and look forward to your prompt response to this information request.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Eric J. Wilson". The signature is stylized with a large "E" and a long horizontal stroke.

Eric J. Wilson, Deputy Director for Enforcement & Homeland Security  
Superfund and Emergency Management Division

Enclosures

cc: Joanne Vos, Esq.  
Pamela Tames, P.E., EPA  
Amelia Wagner, Esq., EPA

## **ATTACHMENT A**

### **INSTRUCTIONS FOR RESPONDING TO REQUEST FOR INFORMATION**

#### **A. Directions**

1. In answering these questions, every source of information to which you have access should be consulted, regardless of whether the source is in your immediate possession or control. All documents or other information, including records of all types of manufacturing, treatment, transportation or disposal operations, in your possession or in the possession of the city should be consulted.
2. A complete and separate response should be given for each question and subpart. Provide all documents that relate to each question. For each question contained in this letter, if information or documents responsive to this request are not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
3. Identify each answer with the number of the question and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.
4. Provide responses to the best of your ability, even if the information sought was never put in writing or if the written documents are no longer available. Consult with all present and past employees and agents of the city whom you have reason to believe may be familiar with the matter to which the question pertains.
5. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.
6. If you have reason to believe that an individual other than one employed by the city may be able to provide additional details or documentation in response to any question, state that person's name, last known address, phone number and the reasons for your belief.
7. If a document is requested but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, number of pages and all recipients of the documents with their addresses.
8. If anything is omitted from a document produced in response to the Request for Information, state the reason for, and the subject matter of, the omission.

9. For each and every question contained herein, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question and provide true and accurate copies of all such documents.
10. If you are unable to give a detailed and complete answer, or to provide any of the information or documents requested, indicate the reason for your inability to do so.
11. Sign and notarize the Certification of Answers where indicated.
12. Confidential Information. The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. §§ 9604(e)(7)(E) and (F), Section 3007(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6927(b), and 40 CFR § 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim as confidential, you must separately address the following points:

- A. the portions of the information alleged to be entitled to confidential treatment;
- B. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- C. measures taken by you to guard against the undesired disclosure of the information to others;
- D. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- E. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
- F. whether you assert that disclosure of the information would likely result in substantial harmful effects to the city, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.



To make a confidentiality claim, please stamp, or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your response so that all non-confidential information, including any redacted versions of documents, is in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e). If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to you.

## **B. Definitions**

1. The term **"you"** shall mean the addressee of this Request for Information, the addressee's officers, managers, employees, contractors, trustees, partners, successors, assigns or agents.
2. The term **"Site"** shall mean the Pierson's Creek Superfund Site located in Newark, New Jersey. The Site includes the Troy Chemical Company property located at 1 Avenue L, and Pierson's Creek, which begins in the vicinity of Avenue L, proceeds through open drainage ditches and culverts and covered pipes until it discharges into Port Newark. The Site also includes all tributaries to the Creek.
3. The terms **"facility"**, **"hazardous substance"**, and **"person"**, shall have the meanings set forth in Section 101(9), (14), and (21) of CERCLA, 42 U.S.C. §§ 9601(9), (14), and (21) respectively.
4. The terms **"disposal"**, **"hazardous waste"**, and **"storage"** shall have the meanings contained in Sections 1004(3), (5) and (33) of RCRA, 42 U.S.C. §§ 6903(3), (5) and (33), respectively.
5. The term **"pollutant or contaminant"** shall have the same definition as that contained in Section 101(33) of CERCLA and includes any mixtures of such pollutants or contaminants with any other substances.
6. The term **"identify"** means, with respect to a natural person, to set forth the person's name, present or last known employer, business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, occupation, position or business.

7. The term “**document**” and “**documents**” shall include any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in the company’s possession, custody, or control or known by the company to exist, including originals and all non-identical copies.
8. The term “**arrangement**” shall include every separate contract or other agreement between two or more persons, whether written or oral.
9. The term “**material**” or “**materials**” shall include any and all objects, goods, substances, or matter of any kind, including, but not limited to, wastes.
10. The term “**release**” shall have the same definition as that contained in Section 101(22) of CERCLA, 42 U.S.C. §9601(22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, and other closed receptacles containing any hazardous substance or pollutant or contaminant.
11. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or RCRA, in which case the statutory definitions shall apply.

## **ATTACHMENT B**

### **REQUEST FOR INFORMATION**

The United States Environmental Protection Agency ("EPA") is investigating the release of hazardous substances at the Pierson's Creek Superfund Site. The information requested below pertains to the Site as it is defined in the Definitions at ATTACHMENT A. Please provide the requested information, including copies of all available documentation that supports your answers.

- 1) On December 19, 1996, the Mayor of the City of Newark, Sharpe James signed a Memorandum of Agreement with the New Jersey Department of Environmental Protection for the City to perform an Interim Remedial Measure at Pierson's Creek. Pierson's Creek was described as being located at Block 5038, Lot 98 and further defined as being located between Wilson Avenue and Delancy Street. Please provide all reports, data and documents generated pursuant to this action.
- 2) Please describe any and all property interests (e.g., deeds, easements, etc.) that the City of Newark has along the entire length of Pierson's Creek and provide documentation (e.g., deeds, leases) evidencing each such interest.
- 3) On February 17, 1998, Dames & Moore, Inc., submitted a draft report pertaining to the hydrologic and hydraulic study of Pierson's Creek. Please provide this document and any other information in the City's files relating to this report.
- 4) When was the Pierson's Creek channel that proceeds through the Troy Chemical Company property closed and redirected around the Troy Chemical Company property at 1 Avenue L? Were new pipes installed underground or did an underground pipe system already exist? Please provide all reports, data, and documents generated pursuant to this action.
- 5) Pierson's Creek daylights on the property between Delancy Street and the Conrail tracks. Has Pierson's Creek been dredged at this location and, if so, when? If dredging occurred, who performed the dredging and do any documents exist from this dredging? If so, please provide all reports, data, and documents generated pursuant to this action.
- 6) Were construction activities performed along the City of Newark easement in the culverted portion of Pierson's creek south of Troy Chemical Company and north of Delancy Street (Block 5038, Lots 76 and 90)? Please provide any information related to the construction activities including the entity or entities that performed the work, and any engineering drawings, data, and documents associated with activities within the City of Newark easement referenced above.



- 7) Were any other actions performed at Pierson's Creek along its path from Avenue L to its discharge point at Port Newark by the City of Newark, including changes to the configuration of the Creek? Did any other entity perform any work along Pierson's Creek? Please describe what, if any, maintenance the City of Newark has performed on the Creek. Identify each occasion on which all or a portion of the Creek and its tributaries were dredged, cleaned or had debris removed. For each action, describe what was done and identify where any dredged material was disposed. Please provide any analysis or characterizations that were done on the dredged material.
- 8) If known, when was the culvert that contains Pierson's Creek on the Troy Chemical property constructed and when was it diverted to go around Troy Chemical's property?
- 9) If known, when was Pierson's Creek plugged at both ends on the Troy Chemical property?
- 10) Please provide a detailed description of any civil, criminal or administrative proceedings brought against Troy Chemical during its operations at the facility for violations of any local or state laws by the City of Newark relating to water pollution or hazardous waste generation, storage, transport or disposal. Provide copies of all pleadings and depositions or other testimony given in these proceedings.
- 11) Pierson's Creek and its tributaries currently serve as a stormwater conveyance but the Creek historically also served as an industrial wastewater conveyance for this area of Newark. Please provide a description of the area served by the Creek and its tributaries and list the names and addresses of those companies which used Pierson's Creek and/or its tributaries as an industrial wastewater conveyance in addition to the years of use in this manner. Please provide all available monitoring or analytical data on wastes disposed of in the conveyance. Please also provide, if available, documentation of connections to, and/or copies of permits for, the conveyance system, including copies of any permits for discharges to the conveyance system.
- 12) If any of the documents solicited in this information request are no longer available, please indicate the reason why they are no longer available. If the records were destroyed, provide the following information:
  - a. Your document retention policy.
  - b. A description of how the records were destroyed (burned, archived, trashed, etc.) and the approximate date of destruction.
  - c. A description of the type of information that would have been contained in the documents.
  - d. The name, job title and most current address known by you of the person(s) who would have produced these documents; the person(s) who would have been responsible for the retention of these documents; and the person(s) who would have been responsible for the destruction of these documents.

- 13) Please provide the name, address, telephone number, title and occupation of the person(s) answering this "Request for Information" and state whether such person(s) has personal knowledge of the responses. In addition, identify each person who assisted in any way in responding to the "Request for Information" and specify the question to which each person assisted in responding. Please include the names and addresses of former employees who were contacted to respond to any of the questions

CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION

State of \_\_\_\_\_:

County of \_\_\_\_\_:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (answers to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that my company is under a continuing obligation to supplement its response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or the company's answers thereto should become known or available to the company.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (print or type)

\_\_\_\_\_  
TITLE (print or type)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public Signature

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- Print your name and address on the reverse so that we can return the card to you.
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## 1. Article Addressed to:

Angela G. Foster, Esq.  
First Assistant Corporation Counsel  
City of Newark - Department of Law  
920 Broad Street, Room 316  
Newark, NJ 07102



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## 2. Article Number (Transfer from service label)

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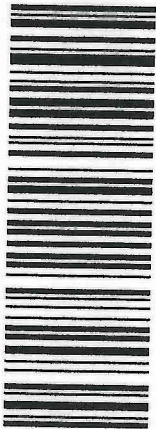
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